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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 In re: TERRORIST ATTACKS ON
4 SEPTEMBER 11, 2001

03 MDL 1570 (GBD)

Conference

5 New York, N.Y.
6 October 12, 2018
10:45 a.m.

7 Before:

8 HON. SARAH NETBURN,

9 Magistrate Judge

10
11 APPEARANCES

12 KREINDLER & KREINDLER
13 Attorneys for Plaintiffs Executive Committee
BY: STEVEN R. POUNIAN

14 COZEN O'CONNOR
15 Attorneys for Plaintiffs
BY: SEAN P. CARTER
J. SCOTT TARBUTTON

16 MOTLEY RICE LLC
17 Attorneys for Plaintiffs
18 BY: ROBERT T. HAEFELE

19 ANDERSON KILL P.C.
Attorneys for Plaintiffs
20 BY: JERRY S. GOLDMAN
ARTHUR R. ARMSTRONG
21 BRUCE STRONG

22 MARTIN F. McMAHON & ASSOCIATES
Attorney for Defendant Jelaida
23 BY: MARTIN F. McMAHON

24 WILSON ELSEER MOSKOWITZ EDELMAN & DICKER, LLP
Attorney for M. McMahon
25 BY: ELIZABETH B. SANDZA

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Appearances (Cont'd)

BERNABEI & KABAT, PLLC

Attorneys for Defendants

BY: ALAN KABAT

SALERNO & ROTHSTEIN

Attorneys for Defendant Kadi

BY: PETER C. SALERNO

AMY ROTHSTEIN

LEWIS BAACH KAUFMANN MIDDLEMISS, PLLC

Attorneys for Defendants

BY: ERIC L. LEWIS

AISHA E. R. BEMBRY

WALEED NASSAR

MOLO LAMKEN

Attorneys for Defendants

BY: ERIC R. NITZ

ROBERT K. KRY

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(Case called; in open court)

THE COURT: Good morning everyone. Please be seated.

THE DEPUTY CLERK: Your Honor, this is in the matter of Terrorist Attacks of September 11th, 2001, Case No. 03-MD-1570.

Counsel, would you please state your appearance for the record.

MR. POUNIAN: Steven Pounian for the Plaintiffs Executive Committee.

MR. CARTER: Good morning, your Honor. Sean Carter for the Plaintiffs Executive Committee.

MR. HAEFELE: Robert Haeefe for Plaintiffs Executive Committee.

MR. McMAHON: Martin McMahon.

THE COURT: I ma sorry, Mr. McMahon sorry.

MR. GOLDMAN: Jerry Goldman for the Plaintiffs Executive Committee.

MR. TARBUTTON: Scott Tarbutton for PEC.

MR. SALERNO: Good morning, your Honor. Peter Salerno, Salerno & Rothstein for Kadi.

MS. ROTHSTEIN: Good morning, your Honor. Amy Rothstein, Salerno & Rothstein for Kadi.

MS. BEMBRY: Good morning, your Honor. Aisha Bembry from Lewis Baach for MWL and IIRO.

MR. NASSAR: Waleed Nassar from Lewis Baach on behalf

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1 the charity officials Drs. Obaid, Turki, Naseef and Basha. And
2 then also on behalf of Mr. Naseef and International Islamic
3 Relief Organization.

4 MS. SANDZA: Good morning, your Honor. Elizabeth
5 Sandza from Wilson Elser here on behalf of Mr. McMahon.

6 I apologize for our delayed flight, and thank you for
7 your consideration.

8 MR. LEWIS: Good morning, your Honor. Eric Lewis on
9 behalf of the Muslim World League and the IIRO.

10 MR. KABAT: Good morning, your Honor. Alan Kabat on
11 behalf Basha and Turki.

12 THE COURT: Thank you.

13 Yes.

14 MR. STRONG: Bruce Strong from Anderson Kill on behalf
15 of Plaintiffs Executive Committee and the O'Neill plaintiffs.

16 MR. ARMSTRONG: Good morning, your Honor. Arthur
17 Armstrong also from Anderson Kill.

18 MR. KRY: Your Honor, Robert Kry from Molo Lamken for
19 Dallah Avco.

20 MR. NITZ: Eric Nitz also from Molo Lamken for Dallah
21 Avco.

22 THE COURT: I think we have more appearances than we
23 needed because the 10:00 conference is really to address the
24 issue facing Mr. Jelaidan and Mr. McMahon. So I appreciate
25 everybody else being here for this conference, but I think it

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1 is really a conference for Mr. McMahon and his counsel and the
2 representative of Plaintiffs Executive Committee, who will be
3 addressing this issue.

4 One housekeeping matter. Let me remind everybody
5 given the cavernous courtroom we are everyone can be sure to
6 speak into their microphone so most importantly the court
7 reporter can hear you.

8 So we're here to address both the motion for sanctions
9 or additional sanctions against Defendant Jelaidan as well as
10 whether or not those sanctions should be simultaneously opposed
11 jointly and severally against Mr. McMahon and additionally
12 whether or not I should grant Mr. McMahon's motion to withdraw.
13 I think I will begin with that motion first.

14 Ms. Sandza.

15 MS. SANDZA: I am here to oppose the joint and several
16 suggestion. Mr. McMahon brought the motion to withdraw
17 himself.

18 THE COURT: So then I will speak with you, Mr.
19 McMahon, in the first instance.

20 So in your application to withdraw as counsel, you
21 raise a number of grounds for that motion. You assert that
22 your relationship with your client has deteriorated such that
23 you are unable to communicate effectively with him. You also
24 assert that you have not been paid and that that is a basis for
25 withdrawal. Finally, you assert that not only that you are

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1 unable to speak effectively with your client directly and
2 particularly when there are urgent matters but that you are
3 unable to speak regularly with your Saudi counterpoint, who is
4 the person that you have been communicating with in order to
5 interact with your client. Lastly, you make a rather vague
6 representation that there are irreconcilable conflicts. I
7 assume one of those conflicts is the issue that Ms. Sandza is
8 here to address about your potential exposure for any sanction.

9 I wanted to confirm whether there was any other basis
10 for you to allege that there is an irreconcilable conflict?

11 MR. McMAHON: I think that will do it, your Honor.

12 THE COURT: So let's talk about the payment issue. As
13 you know the law does permit a lawyer to withdraw when there is
14 a failure to make payment. In your application you say that
15 you have not been paid, you say things like at times payment
16 has been late, or you don't believe Mr. Jelaidan has the assets
17 to continue to pay you. In apposing that motion for your
18 withdraw, Mr. Jelaidan's primary argument is that he paid you a
19 lump sum of money with the expectation that that would cover
20 all legal fees and that is why he opposes it because he says he
21 doesn't have anymore money.

22 So where is the truth here?

23 MR. McMAHON: Well, your Honor, in terms of the truth,
24 I did enter what is called a fixed-fee legal agreement, but
25 that did not encompass certain issues like the ones that were

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1 unforeseeable at the time but developed. One was this
2 discovery issue. I told him that he had to produce all
3 discovery that was required under Rule 34 requests, and we
4 didn't produce I think enough documentation.

5 THE COURT: So what was unanticipated about discovery?

6 MR. McMAHON: I am sorry?

7 THE COURT: You said that you had a fixed fee that
8 covered your representation but it didn't cover unexpected
9 matters and then you began to talk about discovery.

10 MR. McMAHON: Yes, your Honor. The fact that we would
11 be embroiled in an ancillary proceeding regarding sanctions for
12 not providing the necessary documentation overseen by then
13 Magistrate Maas. I never contemplated that, your Honor. And
14 evidence that we departed from whatever contract there was, I
15 for the last two years have been sending statements to him
16 regarding the additional work that has been imposed on me and
17 sometimes he has paid that. And of course recently I found out
18 that he is broke and he cannot pay, for example, my expenses
19 for coming here or any time that I incur. We departed from
20 whatever that contact was a couple years ago, and I sent him
21 statements and sometimes it would take as much as six or seven
22 months to get paid. I have no prospect, your Honor, of getting
23 paid in this case.

24 THE COURT: Can't you make it more clear for me. I
25 thought what you said, which is consistent with what

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1 Mr. Jelaidan side, is that you had a contract -- a retainer
2 agreement I presume -- that entitled Mr. Jelaidan to your
3 representation for some scope of work for a fixed fee.

4 MR. McMAHON: Yes, your Honor.

5 THE COURT: So it sounds like what you are saying is
6 that at a certain point you decided that the representation you
7 were providing exceeded the scope of the original retainer
8 agreement?

9 MR. McMAHON: Yes, your Honor. His counsel Basim Alim
10 agreed and that is why I started sending independent fee
11 statements. In other words, my sending these statements were
12 inconsistent with, say, a fixed-fee contract. So I started
13 sending out statements because I was embroiled in a whole host
14 of things, which a litigator would normally not encounter in
15 any standard litigation.

16 THE COURT: I am not sure discovery disputes is
17 outside of standard litigation.

18 MR. McMAHON: Discovery disputes, your Honor, with all
19 due respect is one thing; but I never thought we would be on
20 the wrong end of a hearing and sanctions motion that resulted
21 in \$147,000 fine. This was not just a discovery dispute, your
22 Honor, with all due respect.

23 THE COURT: Have you provided the Court with your
24 initial retainer agreement?

25 MR. McMAHON: I looked for it, your Honor. It was so

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1 long ago I couldn't find it and we just moved our offices on
2 August 1st. I will renew my efforts to find it, but I can
3 represent to the Court that it was a fixed-fee contract in the
4 sense that I will take care of this litigation. Again, it was
5 at least an understanding that we wouldn't, for example, the
6 whole issue with OFAC, that I would be asked to cooperate in
7 terms of securing a license.

8 THE COURT: Just to be clear, your client is being
9 accused of materially supporting the 9/11 terrorist attacks.
10 So the idea this would be an easy representation is not really
11 credible.

12 MR. McMAHON: Well, I wouldn't say easy, your Honor,
13 but I have secured eight dismissals in this case and I thought
14 I might be able to secure his dismissal for a lot of reasons,
15 your Honor. So, no, it is not an easy case by any means and it
16 is the most complicated case I think in America based upon a
17 New Years Times article I read.

18 I certainly didn't envision an easy case. I am a
19 litigator with some experience and I try to vigorously all
20 clients. I certainly never viewed this as an easy case.
21 Everything case is going to have some issues; but the discovery
22 disputes that I have been involved with, your Honor, when I was
23 with some very large law firms, discovery disputes are
24 something I am going to put this into the logbook and say it is
25 confidential. We can dispose of some issue like that as a

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1 discovery dispute probably in a short hearing in front of a
2 judge. So discovery disputes that I envisioned were certainly
3 not with what I ended up being involved in.

4 THE COURT: So you had a retainer agreement.

5 Did Mr. Jelaidan sign that agreement?

6 MR. McMAHON: Did he have it, your Honor?

7 THE COURT: Did he sign the retainer agreement?

8 MR. McMAHON: Oh, sure. Your Honor.

9 THE COURT: Did the retainer agreement obligate
10 Mr. Jelaidan to pay a flat fee or somebody else?

11 MR. McMAHON: Oh, no. It obligated Mr. Jelaidan to do
12 that.

13 THE COURT: Did he in fact pay that flat fee?

14 MR. McMAHON: I am sorry?

15 THE COURT: Did he in fact pay that flat fee?

16 MR. McMAHON: I think for the last payment he did,
17 your Honor. I guess I would concede that he substantially
18 complied with that.

19 THE COURT: How much was that flat fee for?

20 MR. McMAHON: How much?

21 THE COURT: Yes.

22 MR. McMAHON: I don't know whether, your Honor, I am
23 intruding on confidential information here.

24 THE COURT: I don't think retainer agreements are
25 confidential.

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1 MR. McMAHON: I am saying the amount of money that is
2 involved.

3 Can I confer with counsel, your Honor?

4 THE COURT: Sure.

5 (Pause)

6 MR. McMAHON: Your Honor, we take the position that
7 that is part of an attorney-client communication. And whether
8 the amount was a million dollars or something else, I don't
9 know whether that is even relevant to the issue before this
10 Court, whether I somehow interfered with the plaintiffs'
11 ability to secure the monies that the judgment provided for.

12 THE COURT: Well, I don't know that it is necessarily
13 relevant to the question of whether you should be sanctioned,
14 but it is relevant to the question of whether or not you should
15 be permitted to withdraw.

16 Your argument as I understand it is primarily you lead
17 with the argument that you are not being paid for your work.
18 Mr. Jelaidan says we agreed on a flat fee and I paid it. If
19 the flat fee that you agreed upon was \$20 and your view is that
20 the scope of the engagement was so slight that it is no longer
21 fair for me to continue working, that would be one thing. If
22 the scope of the engagement was such that it was agreed that he
23 would be paid you a million dollars, that would be another
24 thing.

25 MR. McMAHON: Well, your Honor, I have no problem with

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1 conveying the amount of money he agreed to in chambers or
2 something or some other way to do this. It was not a
3 substantial million-dollar sum by my means I can assure the
4 Court. Again, your Honor, the fact that I was sending out
5 statements for the last two years -- independent statements, if
6 he labored under the presumption or his attorney did Basim Alim
7 that we had fixed-fee contracts, surely he would have sent back
8 something to me: Martin, look, we have a fixed-fee contract.
9 Why did you send me that statement? Well, I sent the
10 statement, your Honor, because we had agreed that all of the
11 work that kept coming up here was totally not contemplated in
12 terms of somebody acting in good faith and fair dealing with
13 respect to the interpretation of the contract.

14 THE COURT: You said a moment ago that you believe he
15 has substantially complied with whatever terms --

16 MR. McMAHON: Well, whatever the --

17 THE COURT: Can I finish my sentence?

18 MR. McMAHON: Yes, I would have to concede that.

19 THE COURT: You said earlier that he substantially
20 complied. When was the last invoice that you sent and when was
21 the last invoice that was paid?

22 MR. McMAHON: I believe that was some time last year
23 for approximately \$6,000 and it was overdue by a number of
24 months in connection with some of the proceedings I have
25 already described here. That is not the concern I had, your

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1 Honor, with respect to his breaking the contract.

2 The concern I had is that I no longer had at least a
3 year ago and perhaps longer -- a condition of the contract was
4 that you have to have an attorney in general -- I forget what
5 the word is, but an attorney in Saudi Arabia -- that I can work
6 with. Wael Jelaidan has no knowledge of the system and has no
7 legal training, Sometimes I would send stuff over there and
8 without Basim's attention, nothing would happen. That is why I
9 feel that I have been sort of in a chasm here in the sense that
10 I cannot communicate with my client and I cannot communicate
11 with my local counsel. How do I effectively represent him,
12 your Honor? I guess this goes to the motion to withdraw so I
13 don't want to get off on that tangent that, but that is the big
14 concern I have, your Honor. When we have a contract, money is
15 a consideration obviously; but I couldn't perform under that
16 contract if we don't have a local counsel that I can deal with
17 in terms of attorney issues.

18 THE COURT: So is the problem with your local counsel,
19 or is the problem with Mr. Jelaidan?

20 MR. McMAHON: The problem is Jelaidan is broke, your
21 Honor.

22 THE COURT: Jelaidan is broke, but you entered into an
23 agreement with an individual to provide legal representation in
24 this case. It sounds like what you just told me was that a
25 requirement of your representation was that Mr. Jelaidan secure

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1 Saudi counsel who spoke English so that you would have a
2 counterpoint in Saudi Arabia with whom you could communicate
3 and who could then communicate.

4 Is all of that correct?

5 MR. McMAHON: That's correct.

6 THE COURT: What you are saying now is that you are
7 unable to communicate effectively with Mr. Jelaidan, and it
8 sounds like the problem is not because Mr. Jelaidan is being
9 unresponsive because you never communicated directly with him.
10 It sounds like the problem is that the Saudi lawyer is being
11 unresponsive.

12 MR. McMAHON: Well, it is both, your Honor. The
13 problem with Mr. Jelaidan is illustrated by the answers we
14 initially received to your questions. Now, as soon as we got
15 your questions, your Honor, we sent that stuff over to Basim
16 Alim. Get on this. Wael is going to have to answer this
17 question. We didn't hear anything. We sent out an email
18 Monday and Friday. We kept pestering him about it.

19 We finally got some answers in and they were
20 incomplete and in one case he didn't answer. It was obvious to
21 me that Basim Alim, a George Town law graduate, was not
22 advising him about preparing answers and I don't think he knew
23 what the consequences were. So I basically sent him some
24 emails and said some of these issues are referenced in emails
25 but your counsel has them. Go to him and talk to him about it.

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1 So that is part of Wael Jelaidan's problem and Basim
2 Alim's problem. Again, Basim bails out at some stage, your
3 Honor. For what reason? He is probably not being paid. So I
4 while Wale Jelaidan when I entered into a contract with him, it
5 was represented that he had sufficient financial resources and
6 we'll be together for a while and that petered out for a lot of
7 reasons.

8 I wanted to apologize, your Honor, to the Court for
9 the conduct of Mr. Jelaidan. He is a far different man today
10 than he was 10, 11 years ago when we contracted and so is Basim
11 Alim. Circumstances change. Something happened where he is no
12 longer communicado and for some reason Basim Alim --

13 THE COURT: He being whom?

14 MR. McMAHON: Wale Jelaidan. But Basim Alim is the
15 same. As I say an integral part of that contract, and probably
16 every contract I have had regarding foreign clients, is that I
17 have to have somebody who has some legal training and
18 background to dialogue with. You have to answer these
19 interrogatories. What are interrogatories?

20 THE COURT: I understand.

21 Here is the problem: All I know is that you were paid
22 some sum of money apparently on a fixed-fee agreement. I don't
23 know what that agreement is and I don't know how much money it
24 was. You then tell me that you started periodically sending
25 invoices some of which were paid and some of which were not

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1 suggesting that maybe the course of conduct would have changed
2 the original retainer agreement such that it was understood
3 that you were no longer working for a fixed fee but you were
4 working for an hourly rate or some other blended agreement.
5 That sounds like it is just a course of conduct and not a
6 written agreement.

7 Mr. Jelaidan is opposing the motion for your
8 withdrawal on the argument that he entered into a contract for
9 you to represent him in this proceeding based on a flat fee.
10 So he says, I paid my lawyer. I don't want to have to find
11 another lawyer. I don't have a whole lot of information here.
12 I am getting conflicting information from what has been
13 provided to me.

14 What you are now telling me is that you have received
15 substantially all of your payments, which is not great but it
16 is also not no payments, and that the weak link in the
17 relationship seems to be your Saudi counterpoint more than
18 Mr. Jelaidan. So I am wondering whether or not that is the
19 problem and we need to address that problem.

20 MR. McMAHON: Well, if Mr. Jelaidan, your Honor,
21 wasn't broke and he could pay local counsel, I think I would
22 have a local counsel to work with. That is the nub of the
23 issue. So you may want to devide Wale Jelaidan from Basim
24 Alim, but I don't know if that is possible under the
25 circumstances.

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1 The question I have, your Honor, if he wants me to
2 stay in -- I guess opposing counsel wants me to stay in, too --
3 what are the services that I could perform under these
4 circumstances? If you go back to Judge Magistrate Maas, who I
5 had a great relationship, your Honor, he wrote an opinion when
6 he entered a default judgment on behalf of I think Rabbeted
7 Trust, a charity in Pakistan. Your Honor, that is from
8 October 28th, 2013. "It is axiomatic that a lawyer cannot act
9 on a client's behalf without its consent and cooperation."
10 Well, today, your Honor, I may have his consent to oppose
11 additional sanctions, and I can address if you want. I don't
12 have his cooperation and I don't have his agent's cooperation,
13 Basim Alim. And Frank Maas's words to me are prophetic in
14 terms of where I find myself.

15 The other thing, your Honor, what is it that I can do
16 if I stay in the case? I offered to plaintiffs' counsel come
17 to Jeddah or do a Skype deposition. Find out where this man's
18 assets are. I offered that I don't know whether it was. What
19 else can I do to represent him other than oppose, say,
20 additional sanctions? What is my role in the case when I am
21 going to call up or send a fax or send an email to counsel and
22 he doesn't get back to me? How do I tell these folks, well,
23 we're not going to do that deposition?

24 THE COURT: Will Mr. Basim Alim appear in this court?

25 MR. McMAHON: I am sorry?

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1 THE COURT: Your Saudi counterpoint, Mr. Basim Alim,
2 appear in this court?

3 MR. McMAHON: Has he?

4 THE COURT: Will he? If I order him to appear in this
5 court, will he appear?

6 MR. McMAHON: Your Honor, I think that is part of the
7 reason, and I am glad you brought it up, about the broad
8 speculative nature of the relief. I don't represent him. I
9 think you have the authority if you have sufficient grounds to
10 do so to order him to appear. My guess is that he --

11 THE COURT: I am not sure I have that authority.

12 MR. McMAHON: I am sorry?

13 THE COURT: I am not sure if I have that authority if
14 he is in Saudi Arabia.

15 MR. McMAHON: My guess is that he would not show up,
16 and I will give you an illustration why not. I had
17 interrogatories prepared for a charity client who is now
18 represented by somebody else and they refused to sign the
19 interrogatories because they heard these terrible things about
20 the 9/11 cases. You get them turned in and you get sued for a
21 trillion dollars. They wouldn't even try to sign the
22 interrogatories. So the folks over there, your Honor, a quite
23 paranoid about the 9/11 case, which has been going on for,
24 what, 14 years. I am sure he has known -- I shouldn't say I am
25 sure. I am speculating, your Honor, if it helps you I don't

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1 think he would show up.

2 THE COURT: Speculation doesn't help.

3 Let me ask you another question. In apposing the
4 initial motion for your withdrawal, the Plaintiffs Executive
5 Committee highlight an email that you sent on February 8th of
6 2018 to Mr. Haefeale in which you said, Mr. Jelaidan has no -- I
7 am paraphrasing -- intention of paying me sanction award. This
8 was a week or two after OFAC issued the license. So you said
9 that in an email to Mr. Haefeale on February 8th.

10 In response to my questions to Mr. Jelaidan in his
11 sworn affidavit, he says that the first time he heard from you
12 regarding the OFAC license was February 28th. So 20 days after
13 you told Mr. Haefeale that your client was not going to be
14 paying the award.

15 So my question for you is when you sent that email on
16 February 8th, were you doing that at the direction of your
17 client?

18 MR. McMAHON: Well, I believe I discussed that with
19 Wale Jelaidan because there is an email that you can look at,
20 your Honor -- I think it was January 31st, 2016 -- in which I
21 present to Basim Alim the different options he has. Number
22 one, terminate us as U.S. counsel. If Wale doesn't want to
23 cooperate with the Court's sanction order and does not want to
24 assist us in making his foreign based bank accounts available
25 to the Court, then he cannot comply with our ethical

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1 obligations Court and we'll have to withdraw as counsel.

2 So I don't know, your Honor. It has been a while
3 since I had that conversation, but maybe I had a poor choice of
4 words and should have said, He is broke. I know I said that
5 somewhere else. He is broken. Even if he wanted to comply
6 with the sanction order, he doesn't have the money to pay. So
7 I never sensed that Wael wouldn't pay. I sensed that he felt
8 this unbelievable pressure which I learned later on about these
9 creditors and everything. I never knew that issue would arise
10 when we signed that contract, for example. Again, I would have
11 to be borrowing money from all over the place to pay attorney
12 fees. Had I known that, I never would have entered into that
13 contract.

14 I am saying, your Honor, we laid out in that email,
15 Terminate us, do nothing, hire Swiss counsel. That statement,
16 your Honor, clearly shows that I don't want to, Martin McMahon,
17 breach you my ethical obligations to the Court so do something
18 about it or fire him. So I think that is convincing evidence,
19 your Honor, that at no time did I try to misrepresent
20 plaintiffs' counsel any in way. I made a poor choice of words
21 and I apologize if that is case.

22 Again, I apologize for the conduct of Wale Jelaidan.
23 We're eating up valuable Court time. For what? He owes
24 \$147,000. Now with interest maybe 200 K. I don't know.
25 Fining him another 50,000 or \$100,000, I don't know whether

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1 that is something that will be effective. I know an equity
2 court doesn't do scuffy debts, worthless. I probably misspoke
3 when I said that. He had every intention to pay. He thought
4 it was unfair and unjust and everything, but I explained this
5 is the system. He didn't produce documentation. So, your
6 Honor, I probably misspoke with that and I apologize.

7 THE COURT: Who wants to speak on behalf of the
8 Plaintiffs Executive Committee? I will give you a few moments.
9 I read your opposition briefs and I think the real question is
10 as between Mr. McMahon and his client and what the Court should
11 permit. I am happy to hear from you briefly.

12 MR. HAEFELE: Thank you, your Honor. I think your
13 Honor is right that most of the factors that we solved were
14 covered in the brief for the most part, but I do have a few
15 words to respond to what Mr. McMahon has said here today.

16 Your Honor, your Honor has already indicated that
17 Mr. Jelaidan opposes the release of Mr. McMahon and I think
18 there would be a problem if Mr. Jelaidan were left in the
19 litigation without representation. That would cause a problem
20 for the entire litigation to have an unrepresented defendant
21 who is not being given advice from counsel as to how to
22 proceed. We have already had problems when he does counsel. I
23 cannot imagine that that will be facilitated if he doesn't have
24 U.S. counsel advising him how to proceed through the
25 litigation.

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1 THE COURT: What more do you want from Mr. Jelaidan?
2 Do you want to take his deposition?

3 MR. HAEFELE: Two answers to that, your Honor. One of
4 my next comments was if you were to default Mr. Jelaidan for
5 his continued noncompliance as part of the additional sanctions
6 and after the default were imposed, I suppose that Mr.
7 McMahon's continued representation issues would presumably --

8 THE COURT: Assume that I am not going to default him
9 for discovery abuses.

10 MR. HAEFELE: Well, one of the things that I think
11 would be appropriate would be to have Mr. Jelaidan sit for a
12 deposition. Now, Mr. McMahon has indicated that he has offered
13 us to do a Skype deposition of the defendant. The problem with
14 that, your Honor, is it just continues the same pattern that
15 has continued for years of the defendant and Mr. McMahon
16 facilitating it, completely showing lack of respect to the
17 Court, to its orders and to the plaintiffs.

18 Your Honor has already addressed this in the
19 deposition protocol where you've indicated there are four
20 locations that are presumptively acceptable locations to
21 conduct depositions -- New York, London, Rome, and Madrid. You
22 specifically, your Honor, said that plaintiffs' counsel would
23 not be forced to go to Riyadh to do a deposition. You
24 specifically, your Honor, had said that to the extent that
25 there were going to be remote depositions, they would be done

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1 on consent of all parties involved.

2 What is happening is the defendants are repeatedly
3 insisting that the plaintiffs have to do something that your
4 Honor has said was something that can be done on consent.

5 THE COURT: I am going interrupt you. I know this is
6 an issue that relates to other defendants. I have written on
7 the issue already. I want to focus on what it is that you
8 still need to prosecute your claim.

9 You have served discovery demands on Mr. Jelaidan. He
10 has responded in the way that he has. The Court has taken
11 action in the way that it has. I wouldn't anticipate you are
12 going to be getting anything more as far as document discovery
13 from Mr. Jelaidan.

14 The question I have for you is: It sounds like you
15 want to take his deposition, setting aside where it is going to
16 be?

17 MR. HAEFELE: Well, we would want to take his
18 deposition and we would certainly obviously want to continue
19 that he would pay the sanctions. We also think that given
20 complicity, Mr. McMahon should be jointly and severally liable
21 or the sanctions issue. I think information and the
22 satisfaction of the sanctions are already imposed.

23 THE COURT: Thank you.

24 MR. HAEFELE: Candidly our concern with Mr. McMahon is
25 his complicity in the noncompliance. By the way, your Honor,

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1 it isn't just this recent event. It dates back a decade or
2 more. One of the things that is very interesting and very
3 telling here is that when your Honor has called out Mr.
4 McMahon, suddenly his communications are very clear, very
5 concise and he is calling out the lack of understanding of his
6 client. He is calling out and calling to our attention the
7 insufficiency of the responses. If he had done one of two
8 things a decade ago, perhaps the complicity of Mr. McMahon
9 would have been resolved. In other words, if he had done what
10 he tried to get out of representing the defendant a decade ago
11 and not facilitated all of the shenanigans over the course of a
12 decade, he would be on the hook now today as well or if he had
13 called the defendant --

14 THE COURT: What do you mean complicated shenanigans?
15 Let's assume that Mr. Jelaidan was noncooperative and was not
16 going to be producing these documents for whatever reasons. Is
17 your position that Mr. McMahon had a duty to the Court or to
18 the Plaintiffs Executive Committee to withdraw 10 years ago
19 rather than continue to try and represent his client in this
20 court?

21 MR. HAEFELE: Your Honor, I think he had a duty to
22 withdraw before he engaged in the kind of conduct to facilitate
23 misleading the Plaintiffs Executive Committee for a decade.
24 Mr. McMahon's communications about Wale Jelaidan show that he
25 had no communications for good gaps of time and yet he was

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1 making representations, and one your Honor called to Mr.
2 McMahon's attention. He has communicated with the Plaintiffs
3 Executive Committee with the plaintiffs as though he has had
4 communications with the defendant and he has not, which by the
5 way is a pattern that your Honor will see throughout the day.

6 Mr. McMahon's communications to the Court continue to
7 pass on suspect information to the Court and to the plaintiffs
8 facilitated the the delay, facilitated the interference in
9 imposing the sanctions. We started with these sanctions years
10 ago and there was a long period of delay in terms of getting
11 the OFAC order, which your Honor may recall.

12 Your Honor, I don't recall if it was ever indicated,
13 but a month before the order came out, I started calling OFAC
14 and following up and within a month the sanctions order or the
15 license happened. I cannot tell you whether it was my calling
16 and being the annoyance or not that made a difference, but it
17 did happen fairly quickly from the time I started calling and
18 following up. I posit that quite frankly Mr. McMahon just
19 wasn't following through sufficiently.

20 Regardless, there is a long pattern of obfuscation,
21 evasiveness, delay that long proceeded the imposition of the
22 sanctions and that is what caused the sanctions. A lot of that
23 had to do with Mr. McMahon and the arguments that he is
24 interposing. He continued to do that with arguments like the,
25 Plaintiffs need to go to the Swiss court to get judgments

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1 enforced. A spurious disagree argument with the argument that
2 Wael Jelaidan's designation and U.S. processes that designated
3 Jelaidan had anything to do with the Court's imposition of the
4 sanctions. It did not. What it had to do with the imposition
5 of the sanctions was Wael Jelaidan and Mr. McMahon's
6 evasiveness and their noncompliance with the Court's orders for
7 a long-standing period of time.

8 So, your Honor, it is our position that not just
9 Mr. Jelaidan but Mr. McMahon and his facilitation of
10 Mr. Jelaidan's evasiveness and delay which wasted the Court's
11 time in many proceedings before both your Honor and Judge Maas,
12 it wasted all of the members of the Plaintiffs Executive
13 Committee time and resources. Quite frankly in the delay, the
14 substantial delay, if anything is to be believed by what
15 Mr. Jelaidan's current finances are, the delay also facilitated
16 diminishment or the depletion of the funds to satisfy the
17 sanctions order.

18 So, your Honor, our position is that if Mr. McMahon
19 had not done what he had done to facilitate it, then
20 Mr. Jelaidan would not have been in the best position to
21 continue the debt. I don't know what Mr. Jelaidan would have
22 done. My sense is he probably would have delayed with another
23 lawyer or he probably would have said, I don't have a lawyer.
24 The fact is what happened throughout that decade-long process
25 is that Mr. McMahon facilitated the delay, and I can posit

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1 pretty safely that that delay would have come to a head much
2 earlier if --

3 THE COURT: Are you suggesting that Mr. McMahon was
4 actually engaged in something more nefarious, that he was
5 encouraging his client not to participate in discovery or
6 telling him it was not important? Are you suggesting he is a
7 coconspirator in Mr. Jelaidan's failure to produce documents?

8 MR. HAEFELE: Well, your Honor, I think the answer is
9 that Mr. McMahon had an obligation to explain the discovery
10 rules to his client. Judge Maas has made clear in proceedings
11 years ago to Mr. McMahon that he had an obligation to go over
12 to his client, sit with his client in person and ensure that --
13 by that point Judge Maas was fed up with the back and forth and
14 having to come before him. The refrain seemed to be at some
15 point, My client doesn't understand the obligations. And Judge
16 Maas said, Then go explain it to him. Go over there and sit
17 with them and tell them their obligations and make it clear.
18 Either Mr. McMahon didn't follow through with that or he did
19 and still nothing happened.

20 I think that the fact that nothing happened with
21 Mr. Jelaidan and we continued to get obfuscation and delay and
22 then you juxtapose that with the letter that your Honor got
23 recently where Mr. McMahon is very clearly and concisely saying
24 I sent him this and I called him out and I said, You had to
25 answer this question better and you have to get more

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1 information, that is the kind of communication that we never
2 saw before.

3 THE COURT: We're getting a little bit late and I
4 don't want to too much delay our 11:00 proceeding.

5 MR. McMAHON: Your Honor, I would like to respond to
6 some of the comments he has made.

7 THE COURT: Okay.

8 MR. McMAHON: You don't know this, your Honor. Go
9 back and look at the emails. There is this personal ad hominem
10 attack on me. Why? I don't know. I haven't filed a bar
11 complaint against him, but he is taking this case rather
12 personally. I don't know why, but he is.

13 Anyway, your Honor, I would like to read into the
14 record based upon the status reports we gave us this is how I
15 slowed down the proceedings at OFAC: April 8th letter to OFAC.
16 Letter May 5th per status report. July 14th and 20th call.
17 Letter July 25th per July 26th status report. August 11th,
18 August 23rd call. September 19th, 26th and 27th call.
19 October 11, week of October 2nd, and October 27 law clerk call.
20 Followup November 21st. The associate called on November 27th.
21 I called twice personally December 26th the day after
22 Christmas.

23 I called on three separate occasions and finally
24 received a communication with a friend of mine there named
25 Heather Epstein, and it is all in the status reports. She said

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1 she would try to facilitate a response from OFAC, and I
2 distinctly remember what she said, your Honor. You can call
3 her to the stand. Martin, you know how the process works. We
4 cannot do anything with OFAC. So the license comes out. Mr.
5 Haefele for some reason thinks that I have this incredible
6 authority and I can interfere in an OFAC proceeding. Nonsense.
7 Sheer nonsense.

8 Now, he also doesn't tell, your Honor, that
9 Mr. Jelaidan is under house arrest. Now, I don't fully know
10 what that means, but he can't get leave the country. So he
11 cannot go for to London. He cannot go to Madrid. I came up
12 with a solution, and I don't whether they want to, your Honor,
13 but I think he would be willing to sit for a deposition live in
14 Jeddah. I don't know if his counsel will be there, but he has
15 indicated that to me, your Honor.

16 THE COURT: Why is he on house arrest?

17 MR. McMAHON: Why?

18 THE COURT: Yes.

19 MR. McMAHON: Well, there is an agreement between
20 Saudi Arabia, your Honor, after 9/11. The agreement was that
21 Saudi Arabia would do everything possible to join the fight on
22 terror. One of the things was that there were some Saudi
23 citizens who were on the radar of the American authorities and
24 Wael is on that radar and they asked the government I guess to
25 have a house arrest. He couldn't travel around the globe and

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1 do other things consistent with what I think is the wrong
2 image. So I think the Saudi government in an effort to placate
3 American law enforcement authorities put him under house
4 arrest; but he cannot leave the country, your Honor. So let
5 them come to Jeddah. Let them do Skype. If they are
6 unsatisfied with Skype, maybe they can get back to you and ask
7 you to do something else.

8 One other point, your Honor. I don't know if your
9 Honor familiar with the authority known as --

10 THE COURT: The court reporter did not hear the case.

11 MR. McMAHON: *Halberstan v. Welsh*, the D.C. Circuit,
12 your Honor. My friend and colleague Jay Stein did that case.
13 Why is it important? You referenced civil conspiracy. I would
14 love that they would sue me as a civil conspirator, your Honor.
15 In terms of Mr. McMahon did this to make sure we couldn't
16 collect. I see. Well, *Halberstan* requires you to lay out the
17 activities that the coconspirator gave him. Well, he actually
18 helped him get an OFAC license and he badgered them almost
19 every day. He invited us to Jeddah to take the man's
20 deposition. In other words, your Honor, there is no basis for
21 this civil conspiracy claim. I am glad you brought it up.

22 I will accept service of process, sir, and expect a
23 vigorous counterclaim personally against you for all the
24 personal attacks you have made upon me.

25 Sorry, your Honor, but my integrity has been impugned

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1 by that man.

2 THE COURT: Understood.

3 Let me let your counsel speak on your behalf and then
4 we will wrap this up.

5 MS. SANDZA: Thank you, your Honor. I know you have
6 heard a lot here. This is my first ever appearance in this
7 group, and I can see that there is a lot of frustration. That
8 is not at issue. What happened 10 years ago is not at issue.
9 What is at issue is whether Mr. McMahon should be held jointly
10 and severally liable for Judge Maas's sanctions. If you read
11 that long opinion that Judge Maas issued, nowhere does he say
12 that Martin McMahon in any way frustrated the discovery or did
13 anything wrong or violated any court order.

14 First of all, to fine a party, to sanction a party
15 under Rule 37, it is similar to a contempt procedure, your
16 Honor. You need to give notice to the target. You need to
17 tell the target what the sanctions would be. You need to
18 produce evidence in a hearing of what proof you have that he,
19 not Jelaidan, but he, Mr. McMahon, did wrong. We're all
20 excited here at this hearing; but if you really look at the
21 May 1st letter, which started it, where they moved I guess you
22 could say for joint and several sanctions, I would call it
23 half-hearted.

24 There is no proof in this letter. All it says is
25 "various indicators" that McMahon did something and most of it

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1 is about Jelaidan. And then the argument is due to Mr.
2 McMahon's "apparent role in intentionally frustrating." As he
3 just stated, he didn't intentionally frustrate anybody's
4 efforts. He, if anything, offered suggestions. They didn't
5 like those suggestions apparently to do a Skype deposition or
6 to maybe register the judgment. I don't why that is such a
7 flashpoint, but it is.

8 As far as OFAC goes, I have personal experience
9 applying for licenses before OFAC. The last one took two
10 years. When the process began, the investigator at OFAC told
11 me, We will not communicate with you. There is nothing you can
12 do to speed this this up. You will hear from us when you hear
13 from you us. That did not even involve a designated national.
14 I think Mr. Haefele must have just hit the jackpot that he made
15 the last call and then the license came out in the ordinary
16 course.

17 I think what you have here is a lawyer who is not --
18 and we can all sigh a sigh of relief here. We don't guarantee
19 our client's performance. We are not guarantors under the New
20 York professional rules for lawyers. We can be sanctioned if
21 we personally disobey a court order or if we personally don't
22 follow through with our own obligations. We do not guarantee
23 our client's performances. So all that Judge Maas found wrong
24 was done by Jelaidan, not by McMahon. For that reason this
25 motion if you want to call the May 1st letter is way out of

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1 line.

2 THE COURT: Thank you.

3 MR. HAEFELE: Your Honor, may I have one quick
4 response to one thing?

5 THE COURT: Incredibly quick.

6 MR. HAEFELE: Your Honor, both of them are making it
7 out like this is a one-off sort of thing. Mr. McMahon is in a
8 particularly useful or he is in a position that he absolutely
9 knew what was going on with regard to Mr. Jelaidan's conduct
10 and he knew and here why we know he knew. He did the same
11 thing at least twice if not three times before.

12 Mr. McMahon spoke earlier about one of the other
13 defendants, but he has represented two other defendants who
14 have been defaulted for essentially the same pattern of
15 conduct. He represented Sanabil Akir and he represented
16 Rabbeted Trust that he mentioned earlier, both of which were
17 defaulted for lack of compliance with this Court's discovery
18 orders. That is three instances. Your Honor, we came to the
19 Court with regard to similar instances of noncompliance with
20 regard to IIRO and Muslim World League who withdrew from Mr.
21 McMahon and went over to another counsel and have worked with
22 the new counsel and fired Mr. McMahon as I understand.

23 So it is not just there is an individual instance. It
24 is a pattern of repeated conduct.

25 THE COURT: Thank you. We're a little bit late

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1 starting our 11:00 conference. We're going to take a brief
2 recess.

3 Mr. McMahon, I am going to reserve on a decision on
4 both your motion to withdraw and the motion to be held jointly
5 and severally liable so that I can digest all of the
6 information that I have heard.

7 I am likely to ask for *in camera* production of your
8 retainer agreement, which you tell me you don't have. But if
9 you can find your retainer agreement and the proof of both
10 sending invoices to Mr. Jelaidan and the proof of payment so
11 that I can assess whether or not how you have been paid and
12 what the expectations were for the parties. Again, I am in a
13 slightly unusual situation where the client is requesting that
14 I not let you go and in part because the client is saying that
15 he has already paid for the services. So I would like to
16 evaluate that especially since you are telling me that you are
17 due money as a basis for your withdraw.

18 MR. McMAHON: Your Honor, how do I preserve on my
19 attorney-client argument? Because I have no permission to
20 waive that relationship that Wale Jelaidan gave me. I
21 appreciate the *in camera*. I also would like to take the
22 opportunity to explain to you why those charities fired me,
23 your Honor. I think you would look on the case entirely
24 different as to what Mr. Haefele is trying to suggest that
25 somehow I was doing something wrong.

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1 So I understand your concern, your Honor. I never
2 encountered some case like this. I will do my best to work
3 with you. I just want to be protected, your Honor, in terms of
4 that attorney-client relationship. I don't want Wale Jelaidan
5 going to the New York Bar and saying, Mr. McMahon waived the
6 attorney-client relationship. I don't know whether we can work
7 out some compromise, but I will try to elicit Mr. Sandza's
8 assistance on this, your Honor. I want the record to show that
9 I have no authority to waive that privilege.

10 MR. HAEFELE: Your Honor, first off Mr. Jelaidan
11 apparently would be the other person who would have at
12 authority to waive that if in fact there is a privilege that
13 applies.

14 THE COURT: I am not sure that it is privilege and I
15 think the Court can order it.

16 MR. HAEFELE: I agree with your Honor on that.

17 On a very closely related issue, Mr. Jelaidan's
18 responses to the 10th question asked he does indicate, I have
19 also signed a one-time fixed-fee agreement with Mr. McMahon.
20 In addition, direct costs were paid by Good Samaritans. To the
21 extent that there is any information regarding payments
22 received by Good samaritans I think your Honor should see that
23 as well.

24 THE COURT: Thank you.

25 We'll take a brief recess. Those people who no longer

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1 need to be at counsel table, should move. Those who should be
2 at counsel table, should step up. We'll be back up hopefully
3 in a matter of minutes.

4 o0o